

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|   |   |                    |
|---|---|--------------------|
| <b>AVERY K. GRAIKA</b>                    | ) |                    |
| Claimant                                  | ) |                    |
| VS.                                       | ) |                    |
|   | ) |                    |
| <b>LOWER HEATING AND AIR CONDITIONING</b> | ) | Docket No. 228,141 |
| Respondent                                | ) |                    |
| AND                                       | ) |                    |
|   | ) |                    |
| <b>CINCINNATI COMPANIES</b>               | ) |                    |
| Insurance Carrier                         | ) |                    |

**ORDER**

Respondent appealed Administrative Law Judge Brad E. Avery's November 20, 1998, Award. The Appeals Board heard oral argument by telephone conference on July 7, 1999.

**APPEARANCES**

Claimant appeared by his attorney, George H. Pearson III of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Christopher J. McCurdy of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

**ISSUES**

The Administrative Law Judge found claimant suffered a right knee injury while working for the respondent on June 16, 1997. Thereafter, the Administrative Law Judge found that claimant developed a limp as a result of the right knee injury that permanently aggravated a preexisting low-back condition. Respondent terminated claimant because it was unable to accommodate claimant's permanent restrictions. As a result of these two work-related injuries, the Administrative Law Judge found claimant was entitled to permanent partial general disability benefits based on a work disability. Combining a 47 percent work task loss with a 24 percent wage loss, the Administrative Law Judge awarded claimant a 35.5 percent work disability.<sup>1</sup>

On appeal, respondent contends claimant failed to prove he permanently aggravated a preexisting back condition and is, therefore, limited to a scheduled right lower extremity injury. Respondent further argues, if it is found claimant did sustain a permanent low-back injury, the

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<sup>1</sup>See K.S.A. 1996 Supp. 44-510e(a).

claim is barred because he failed to give respondent timely notice of the injury. Additionally, respondent contends claimant is not entitled to a work disability because he retains the ability to earn a comparable wage and he has not made a good faith effort to find appropriate employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board finds the Administrative Law Judge's Award should be affirmed. The Appeals Board agrees with the Administrative Law Judge's analysis of the evidence as set forth in the Award. Additionally, the Appeals Board finds the Administrative Law Judge's findings of fact and conclusions of law are detailed and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own as if specifically set forth herein.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Brad E. Avery's November 20, 1998, Award should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: George H. Pearson III, Topeka, KS  
Christopher J. McCurdy, Wichita, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director